

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

FUSION OIL, INC., f/d/b/a HARAJLI
MANAGEMENT & INVESTMENT, INC.;
HASSAN ALI HARAJLI and
NEW MILLENIUM, INC.;

Plaintiffs,

vs.

Case No. 2006-0332-CK

McKINLEY TRUCKING, INC.;
10 MILE AND GRATIOT SUNOCO,
a Michigan corporation;
MAROUN FAWAZ;
AMALE FAWAZ;
AMERICAN PETROLEUM RETAIL, INC.,
an Ohio corporation; and
HERBERT HOWARD;
Jointly and Severally,

Defendants.

OPINION AND ORDER

Defendants 10 Mile and Gratiot Sunoco, Maroun Fawaz and Amale Fawaz move for summary disposition under MCR 2.116(C)(6).

I. BACKGROUND

Plaintiffs Fusion Oil, Inc., Hassan Ali Harajli and New Millenium, Inc. filed this action on January 23, 2006 asserting they had an agreement with defendants 10 Mile and Gratiot Sunoco, Maroun Fawaz and Amale Fawaz (collectively, defendants "Fawaz") which gave plaintiffs the exclusive right to provide Sunoco-branded gasoline and petroleum services to defendants Fawaz' service station. Notwithstanding, plaintiffs aver defendants Fawaz requested



and received unbranded gasoline from defendants American Petroleum and Herbert Howard; defendant McKinley Trucking transported the unbranded fuel despite full knowledge that the station was Sunoco- branded.

Accordingly, plaintiffs' complaint alleges: I. Tortious Interference with Contract against defendants American Petroleum and Howard; II. Tortious Interference with Business Expectancy against defendants American Petroleum and Howard; III. Unjust Enrichment against McKinley; IV. Unjust Enrichment defendants American Petroleum and Howard; V. Conspiracy against defendants McKinley, Fawaz (collectively), American Petroleum and Howard; and VI. Violation of the Petroleum Marketing Act, 15 USC 2801 *et seq.*, against defendants Fawaz.

Defendants Fawaz now move for summary disposition.

II. STANDARD OF REVIEW

Dismissal is proper when another action has been initiated between the same parties involving the same claim. In order for a pending action to abate a subsequent action, the two suits must be based on the same, or substantially the same, cause of action and request for relief. *Township Oil Co v State Bank of Fraser*, 162 Mich App 737, 740-741; 413 NW2d 94 (1987). An increase in the amount of money damages alleged is insufficient to avoid dismissal. *Id.*

III. ANALYSIS

Defendants Fawaz assert a prior federal action (*Ten Mile & Gratiot Sunoco, Inc v Fusion Oil Company*, United States District Court, Eastern District of Michigan, Case No. 5:05CV0036) abates this action.

Plaintiffs deny the same causes of action are being litigated here as in federal court and note the addition of three other parties to this action that are not parties to the federal action.

Plaintiffs' arguments wholly lack merit.

Plaintiffs first assert this action relies on claims distinct from the contract claims in the federal action. However, nothing could be further from the truth. Plaintiffs' conspiracy claim alleges defendants Fawaz conspired with defendants McKinley, American Petroleum and Howard to break the contract between plaintiffs and defendants Fawaz regarding the exclusive distribution of Sunoco-branded gasoline to the station. Hence, plaintiffs' contrary argument is worthy of sanctions.

Second, this action and the federal action clearly involve the same operative facts.

Third, plaintiffs offer no substantiation for their claim that it makes more sense to file this action than to add the additional parties in the federal action. Given the substantial overlap of the issues and facts, judicial economy would favor adding these additional parties to the federal action rather than having two courts address the same basic issues.

Similarly, plaintiffs' assertion that these other parties were not discovered until the federal action "had been underway for a lengthy period" does not preclude adding them to that action (e.g., necessary or permissive joinder, interpleading).

Plaintiffs' arguments regarding defendants Fawaz' forum shopping by pursuing the federal action should be addressed to the federal court, not this Court.

Finally, plaintiffs' remaining tort claims against defendants McKinley, American Petroleum and Howard—but not defendants Fawaz—are not grounds for denying summary disposition. These other tort claims do not involve defendants Fawaz and do not serve as a reason to keep them as parties to this action; these claims would still remain if plaintiff is required to pursue Counts V and VI in federal court.

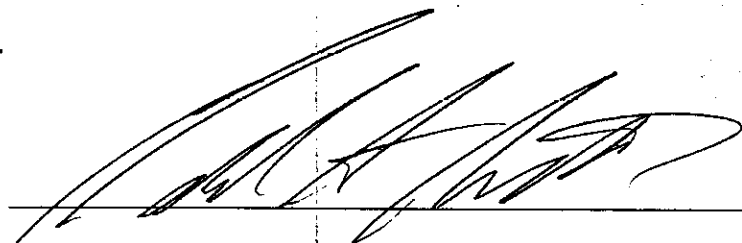
IV. CONCLUSION

For the reasons set forth above, defendants 10 Mile and Gratiot Sunoco, Maroun Fawaz and Amale Fawaz' motion for summary disposition is GRANTED under MCR 2.116(C)(6).

Accordingly, plaintiffs Fusion Oil, Inc., Hassan Ali Harajli and New Millenium, Inc.'s claims against defendants Fawaz are DISMISSED, without prejudice. MCR 2.116(I)(1).

This Opinion and Order neither resolves the last pending claim in this matter nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

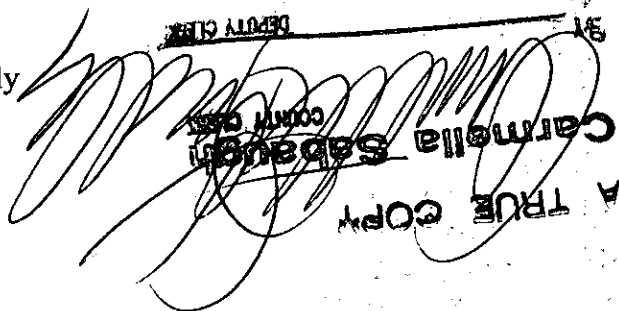


(EDWARD A. SERVITTO, JR., Circuit Court Judge

Date: **MAY 18 2006**

Cc: Cyril Hall, Attorney for Plaintiff

Shereef Akeel, Attorney for 10 Mile Fawaz's Only


Carmella Sabouni
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JUN 19 2006
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